

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

THE HANOVER INSURANCE GROUP A/S/O)
JOSHUA FORTE, ANGELA FORTE,)

Plaintiff(s),)

v.)

Case no: 19-cv-1054

ROBERTO CENDENO HERNANDEZ and)
EMC AUTO TRANSPORT, LLC,)

Defendant(s).)

DEFENDANTS' MOTION TO TRANSFER
VENUE TO THE UNITED STATES DISTRICT COURT
OF MICHIGAN – EASTERN DIVISION

NOW COME Defendants, ROBERTO CENDENO HERNANDEZ and EMC AUTO TRANSPORT, LLC, by and through their attorneys, CHILTON YAMBERT PORTER LLP, pursuant to Title 28 USC §1404, and hereby file this Motion to transfer venue of the cause entitled *The Hanover Insurance Group A/S/O Joshua Forte, Angela Forte v. Roberto Cendeno Hernandez and EMC Auto Transport, LLC*, originally filed in the Circuit Court of Franklin County, Illinois, under case number 19-CV-1054-JPG-RJD and now pending in the United States District Court in Southern Illinois.

As grounds for transfer of venue, Defendants state as follows:

I. FACTS

1. HANOVER INSURANCE GROUP is a Massachusetts insurance company with its headquarters in Massachusetts, making it a citizen of the State of Massachusetts. (Plaintiff's Complaint, Exhibit A, paragraph 1.)

2. The agency handling the claim for Hanover Insurance Group is Lake Agency, Inc. of Grand Blanc, Michigan.

3. The Citizens Insurance Co. of Midwest was the Central Claim Center 29 of Howell, MI and was used to evaluate the damage believed to be done in accordance with Michigan Law. Michigan Insurance Code of 1956 (excerpt) Act 218 of 1956, 500.3116.

4. JOSHUA FORTE and ANGELA FORTE are citizens of the State of Michigan. (Amended Notice of Removal, Exhibit B, at paragraph 2.) Based on information and belief, JOSHUA FORTE and ANGELA FORTE live in Flint, Michigan.

5. ROBERTO CENDENO HERNANDEZ is a citizen of the State of Florida. (Plaintiff's Complaint, Exhibit A, paragraph 4.)

6. EMC AUTO TRANSPORT, LLC, is a Florida Limited Liability Corporation and is thereby a citizen of the State of Florida. (Plaintiff's Complaint, paragraph 4.) Claudia Morales is the sole member and owner of EMC AUTO TRANSPORT, LLC and is a citizen of the State of Florida. (Plaintiff's Complaint, paragraph 4, and Amended Notice of Removal, paragraph 4.)

7. The Defendants, ROBERTO CENDENO HERNANDEZ and EMC AUTO TRANSPORT, LLC, in bringing this motion consent to the venue of the United States District Court for the Eastern District of Michigan to hear this matter regarding a subrogation claim governed by a Michigan No Fault Insurance Policy pursuant to the Michigan No Fault Insurance, in the Michigan Insurance Code of 1956 (excerpt) Act 218 of 1956, 500.3116 on the dates the policy was entered into between the Plaintiffs and the accident August 24, 2017.

8. The United States District Court for the Eastern District of Michigan would have an interest in interpreting the applications of the Michigan Insurance Code of 1956 (excerpt) Act 218 of 1956, 500.3116, as to how the subrogation claim of Hanover Insurance applies to the Michigan Plaintiffs JOSHUA FORTE and ANGELA FORTE.

9. This action is a suit by HANOVER INSURANCE GROUP for money paid to JOSHUA FORTE and ANGELA FORTE, pursuant to their No Fault Automobile Hanover

Insurance Policy pursuant to be paid in accordance with the Michigan law. The amount in controversy is believed to exceed \$75,000.00, exclusive of interest and costs based on a prayer for damages in the sum of \$22,398.58 in Count I, and “for an amount in excess of \$50,000.00” in the second count. Defendants make this reasonable conclusion based on the allegations of the Complaint, a copy of which is attached hereto as Exhibit “A.” Plaintiffs’ Complaint was originally filed in the Circuit Court of Franklin County and requested a sum greater than \$50,000.00 sufficient to satisfy the jurisdictional limitations.

8. This case was transferred from Franklin County Illinois Court to the United States District Court for the Southern District of Illinois pursuant to 28 U.S.C. §1441.

9. The accident occurred in Franklin County, Illinois on NB Interstate 67 where Joshua Forte (of the state of Michigan) was driving his vehicle insured by the Michigan No Fault Insurance Policy.

10. Plaintiff, Hanover Insurance, wants subrogation for payments to or on behalf of Joshua Forte and Angela Forte as required by their Michigan No Fault Insurance Policy (Ex. A. Plaintiff’s Complaint at paragraphs 12-14).

II. PERTINENT LAW

Transfer venue is governed by 28 USC §1404:

- (a) For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented. [*Emphasis added*]

III. ARGUMENT

1. Applying the rule to the facts shows that the proper venue for any such action would be the Eastern District of Michigan where the Plaintiffs, JOSHUA and ANGELA FORTE, reside so the court would be more convenient to them, and the HANOVER INSURANCE GROUP is

subject to personal jurisdiction, and the Defendants, ROBERTO CENDENO HERNANDEZ and EMC AUTO TRANSPORT, LLC, consent to the venue.

2. A main issue in this case will be the rights of the parties pursuant to the subrogation contract that was entered into between the Plaintiffs and their insurer in Michigan.

3. The United States District Court of the Eastern District of Michigan has a local interest in having the effect of the subrogation claim by HANOVER INSURANCE GROUP decided in the Eastern District of Michigan where the Plaintiffs, JOSHUA and ANGELA FORTE, reside and abided by Michigan Law in purchasing the no fault insurance policy.

4. The United States District Court of the Eastern District of Michigan would have more familiarity of the forum with the law that will govern the case, and transferring the case to the United States District Court of the Eastern District of Michigan would help avoidance of unnecessary problems of conflict of laws.

IV. CONCLUSION

WHEREFORE, Defendants, ROBERTO CENDENO HERNANDEZ and EMC AUTO TRANSPORT, LLC, pursuant to 28 USC §1404(a), move this Court to transfer this cause of action to the United States District Court for Michigan Eastern Division.

/s/ D. William Porter
D. William Porter/ IL Bar No: 6183435
CHILTON YAMBERT PORTER LLP
2000 South Batavia Avenue, Suite 200
Geneva, Illinois 60134
(630) 262-4000 (phone)
(630) 262-1144 (fax)
bporter@cyp-law.com
Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies and states that on October 31, 2019, I electronically filed the Defendants' Motion to Transfer Venue to the United States District Court of Michigan – Eastern Division with the Clerk of Court using the CM/ECF system and served notification of such filing upon the following via U.S. Mail Delivery and Via Email Transmission as set forth below:

Mr. Christopher K. Durso, Attorney at Law
211 North Broadway, Suite 2500
St. Louis MO 63102
Email : cdurso@evans-dixon.com

Respectfully submitted,

/s/ David William Porter
David William Porter/ IL Bar No: 6183435
CHILTON YAMBERT PORTER LLP
2000 South Batavia Avenue, Suite 200
Geneva, Illinois 60134
(630) 262-4000 (phone)
(630) 262-1144 (fax)
bporter@cyp-law.com
Attorney for Defendants